

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TAHEREH J. FOROUGH)	
Claimant)	
VS.)	
)	Docket Nos. 205,741 & 208,027
NURSES HOUSE CALL and)	
KIMBERLY-OLSTEN)	
Respondents)	
AND)	
)	
LIBERTY MUTUAL INSURANCE COMPANY and)	
HARTFORD INSURANCE COMPANY)	
Insurance Carriers)	

ORDER

Both claimant and respondent Nurses House Call requested review of the Award entered by Administrative Law Judge Robert H. Foerschler dated January 24, 1997. The Appeals Board heard oral argument July 15, 1997.

APPEARANCES

Claimant appeared by her attorney, Chris Miller of Lawrence, Kansas. The respondent Nurses House Call and its insurance carrier Liberty Mutual Insurance Company appeared by their attorney, James K. Blickhan of Overland Park, Kansas. The respondent Kimberly-Olsten and its insurance carrier Hartford Insurance Company appeared by their attorney Brenden W. Webb of Overland Park, Kansas.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

The Administrative Law Judge awarded claimant permanent partial disability benefits for a July 1, 1995, work-related accident based upon a 57 percent work disability. Claimant requested review and asked the Appeals Board to review the issues of nature and extent of disability, future medical, unauthorized medical, and temporary total disability compensation. Respondent Nurses House Call also requested review of the issue of nature and extent of disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds the Award entered by the Administrative Law Judge should be modified.

The Appeals Board agrees with the analysis and conclusion of the Administrative Law Judge that claimant injured her back while working for the respondent Nurses House Call on July 1, 1995. Claimant testified that she felt a pain in her back while lifting a patient on that date. The Appeals Board finds that claimant did not sustain a separate work-related accident or back injury when she returned to work for one day on November 7, 1995. Rather, the November 1995 temporary aggravation or exacerbation was a direct and natural consequence of her original July 1, 1995, injury.

Because hers is an "unscheduled" injury, claimant's right to receive permanent partial general disability benefits is governed by K.S.A. 44-510e(a). That statute provides in part:

The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen-year period preceding the accident, averaged together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury. In any event, the extent of permanent partial general disability shall not be less than the percentage of functional impairment. . . . An employee shall not be entitled to receive permanent partial general disability compensation in excess of the percentage of functional impairment as long as the employee is engaging in any work for wages equal to 90% or more of the average gross weekly wage that the employee was earning at the time of the injury.

Claimant became gainfully employed on November 13, 1996, earning \$210 per week. Comparing \$210 to claimant's stipulated average weekly wage of \$375.10, yields a difference of 44 percent. Because claimant was unable to find employment after April 24, 1996, until November 13, 1996, the difference between claimant's pre-injury and post-injury average weekly wage for this period is 100 percent. During the period following claimant's injury when she did not work through her release on April 24, 1996, claimant is entitled to temporary total disability compensation. The Administrative Law Judge denied temporary

total disability compensation finding claimant had failed to present evidence of the time she was actually off work due to her injuries. The record is not clear as to when claimant ceased working although she apparently worked for some period of time following her July 1, 1995, accident. However, it was announced at the regular hearing held September 3, 1996, that respondent Nurses House Call paid \$9,752.73 in temporary total disability compensation at \$250.07 per week and ceased payments on April 24, 1996. This represents 39 weeks of temporary total disability compensation. Counting back 39 weeks from April 24, 1996, is July 25, 1995. Therefore, claimant most likely worked 3.29 weeks after July 1, 1995. Claimant's entitlement to these 39 weeks of temporary total disability benefits is not disputed. Therefore, claimant will be awarded that amount at the correct weekly rate of \$250.08.

The Appeals Board agrees with the Administrative Law Judge and, for the reasons set forth in the Award, finds that claimant has a 14 percent loss of ability to perform those work tasks which claimant performed over the 15-year period preceding the date of accident. The Appeals Board also finds a 100 percent difference in pre- and post-injury wages for the period from April 25, 1996, through November 12, 1996. For the period from November 13, 1996, forward, the Appeals Board finds a 44 percent difference in average weekly wage. As required by K.S.A. 44-510e, the Appeals Board averages those losses and finds a 57 percent permanent partial general disability for the period April 25, 1996, through November 12, 1996, and a 29 percent permanent partial general disability for the period after November 12, 1996.

Claimant is entitled to future medical treatment at the expense of respondent Nurses House Call upon proper application to and approval by the Director.

An unauthorized medical allowance should be granted up to the statutory maximum upon presentation of itemized statements verifying same.

The Appeals Board adopts the findings of the Administrative Law Judge to the extent they are not inconsistent with the findings and conclusions made specifically herein.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Robert H. Foerschler dated January 24, 1997, should be, and is hereby, modified as follows: that claimant is entitled to receive 3.29 weeks of permanent partial general disability benefits for a 13% functional disability for the period July 2, 1995 through July 24, 1995; followed by 39 weeks of temporary total disability benefits for the period July 25, 1995 through April 24, 1996; permanent partial general disability benefits for a 57% work disability for the period of April 25, 1996 through November 12, 1996; and permanent partial general disability benefits for a 29% work disability for the period after November 12, 1996.

AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Tahereh J. Foroughi, and against the respondent, Nurses House Call, and its insurance carrier, Liberty Mutual Insurance

Company, for an accidental injury which occurred July 1, 1995, and based upon an average weekly wage of \$375.10. For the period from July 2, 1995 through July 24, 1995, claimant is entitled to receive 3.29 weeks of permanent partial disability compensation at the rate of \$250.08, or \$822.76. For the period from July 25, 1995 through April 24, 1996, claimant is entitled to 39 weeks of temporary total disability compensation at the rate of \$250.08 per week, or \$9,753.12. For the period from April 25, 1996 through November 12, 1996, claimant is entitled to 28.86 weeks permanent partial general disability benefits at the rate of \$250.08 per week, or \$7,217.31 for a 57% work disability. For the period following November 12, 1996, claimant is entitled to 81.24 weeks of permanent partial general disability benefits at the rate of \$250.08 per week, or \$20,316.50 for a 29% work disability, making a total award of \$38,109.69.

As of January 1, 1998, there is due and owing claimant 39 weeks of temporary total disability compensation at the rate of \$250.08 per week or \$9,753.12, plus 91.44 weeks of permanent partial general disability benefits at the rate of \$250.08 per week, or \$22,867.32, making a total of \$32,620.43, which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$5,489.26 is to be paid for 21.95 weeks at the rate of \$250.08 per week, until fully paid or further order of the Director.

Future medical is awarded upon application to and approval of the Director.

An unauthorized medical allowance is awarded up to the statutory maximum upon presentation to respondent of itemized statements verifying same.

The remaining orders entered by the Administrative Law Judge in the Award dated January 24, 1997, are hereby adopted by the Appeals Board as its own.

IT IS SO ORDERED.

Dated this ____ day of January 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Chris Miller, Lawrence, KS
James K. Blickhan, Overland Park, KS
Brenden W. Webb, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge

TAHEREH J. FOROUGH

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DOCKET NOS. 205,741 & 208,027

Philip S. Harness, Director